IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No. 5989 of 2002
Date of Decision: 9 .2.2007

Meham Cooperative Sugar Mills Limited, Meham

Petitioner

versus

Presiding Officer, Labour Tribunal, Rohtak and another

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE BALDEV SINGH

Present: Shri Govind Goel, Advocate for the petitioner
Shri Ramesh Hooda, Advocate

Jasbir Singh, J.

This order will dispose of three Civil Writ Petitions bearing Nos. 4163 of 2002, 5989 of 2002 and 3563 of 2006. For facility of reference, facts are being taken from CWP No.5989 of 2002.

This writ petition has been filed against award dated 14.1.2002, passed by the Industrial Tribunal-cum-Labour Court, Rohtak, ordering reinstatement of respondent No.2 with continuity of service and 40% of the back wages.

Before the Court below, it was case of the respondent-workman that he was appointed as a 'Store Boy' on daily wages, on 29.9.1991. His service was terminated on 27.5.1992 without assigning any reason and in violation to the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short, the Act). By stating that he had completed 240 days in service, in 12 months preceding to his date of termination, it was prayed that on account of non-payment of retrenchment compensation, his termination be set aside. Matter was referred to the Labour Court for adjudication. To

the claim statement filed by respondent No.2, reply was filed by the petitioner, wherein claim of respondent No.2 was opposed, by stating that the reference, having been made at a belated stage, deserves to be dismissed, further that it was a case of abandonment of service by respondent No.2 and his service was never terminated. Date of entry in service, as a Store Boy, was admitted. It was further said that as the respondent No.2 had not completed 240 days in employment, he was not entitled to get retrenchment compensation, as claimed by him. The Court below, on analysis of evidence on record, has observed thus:-

> *"7.As per version of the workman he worked with the management as a store boy from 27.9.1991 up to 27.5.1992 continuously and he had completed 240 days of his service during a calendar year. On the other side management did not dispute the date of appointment of the workman as store boy on 27.9.1991 but it is denied that workman worked up to 27.5.1992 and that he had completed 240 days of his service during a calendar year. In the written statement plea has been taken that workman himself abandoned the job and did not come present after 27.2.1992. MW1 Naseeb Singh office superintendent when appeared in the witness box has stated the workman worked during the months of September, October, November, December 1991, January, February, March, April and May 1992 for a period of 4 days, 29 days, 29 days, 30 days, 31 days, 30 days, 27 days and 28 days respectively. In this way MW-1 Naseeb Singh admits 237 working days of the workman from 27.9.1991 up to 27.5.1992. Naseeb Singh when appeared in the witness box as WW-2 also admitted that the*

workman worked for a period of 237 days from 26.9.1991 upto the month of May 1992. In fact in this case WW-2 Naseeb Singh has been examined again inadvertently as it was not brought to the notice of the Court that the same witness has already been examined in the evidence of the management also. MW-1 Naseeb Singh in his cross-examination stated that in the presence register only a line has been drawn before the name of workman on 17.10.1991. Similarly on 20.10.1991 also before the name of the workman at one place word A is mentioned and at another place only a line has been drawn. There is cutting on word. A mentioned for absence. Similarly regarding 5.11.1991 also either word P is mentioned for presence or line has been drawn. It is denied that workman worked on 5.11.1991 also. There is a cross before the entry dated 27.4.1992 in the name of the workman and word OD is also mentioned. It is argued that on 27.4.1992 workman was on out duty and he worked on 17.10.1991, 20.10.1991 and on 5.11.1991 also. Generally the word P is mentioned in the presence register regarding presence and word A is mentioned regarding absence or signatures of the employees are obtained in the presence register. Words P and A are mentioned generally regarding uneducated employees and in some offices of 4th class officials also. A line drawn before the name in the presence register or by mentioning word OD can not be considered proper word used for mentioning the workman absent from duty. Long line is drawn generally when an employee does not come present for long time. In these

circumstances it cannot be held that workman did not work on 17.10.1991, 20.10.1991, 5.11.1991 and 27.4.1992. Witness himself stated that word OD is mentioned for out duty. If these 4 days are counted certainly workman had completed 240 days of his service during a calendar year. Moreover management has taken false plea in his written statement. MW-1 Naseeb Singh when appeared in the witness box has categorically stated that workman worked up to the month of May 1992 whereas false plea has been taken in the written statement that the workman worked only up to 27.2.1992. This fact indicates that officers of the management have no hesitation in taking false plea. Keeping in view all these circumstances I have no hesitation in holding that workman had completed 240 days of his service during a calendar year.

8.During the course of arguments learned A.R. of the management also argued that seasonal workers of the sugar mill need not be retrenched and they are left with no right under the Act. In support of his this contention learned A.R. of the management placed his reliance upon case law 1996 L.L.R. 214 Supreme Court of India Morinda Co-op. Sugar Mills Ltd. v/s Ram Kishan and others. I have closely perused the above cited case law. As per facts the above cited case law was concerned with seasonal workers of sugar mill Sahabad. Sugar mills gives employment to the workers on temporary basis, on regular full time basis and during sugar cane crushing season as seasonal worker. All employees in the sugar mill cannot be considered as seasonal worker. The

sugar cane crushing season generally starts in the month of November and ends in the month of April and some times in the month of May or June. Workman was given employment on 27.9.1991 about I months prior to the start of sugar cane crushing season. MW-1 Naseeb Singh himself admitted in his cross-examination that work in the store is not seasonable but through out the year. No convincing evidence has been adduced by the management to prove that workman was given employment only during sugar cane crushing season. The post of store boy is not seasonal as per statement of MW-1 Naseeb Singh also. In these circumstances it is held that workman is not a seasonal worker and case law cited above by the learned A.R. of the management is of no help to the management. Workman is entitled to seek relief under the provisions of the Act as he is not a seasonal worker.

9.In the written statement plea has also been taken that workman himself left the job on 27.2.1992 and it is a case of abandonment of service also. The plea taken in the written statement is totally false. Plea has been taken that workman worked up to 27.2.1992 only whereas MW-1 Naseeb Singh official of the management himself admitted that the workman worked up to the month of May 1992. He admitted that workman worked for 29 days in the month of February 1992 also. So this plea of the management cannot be given any weight that the workman himself left the job. So it cannot be held to be a case of abandonment of service. Moreover as per view of the Hon'ble Supreme Court in case law D.K.Yadav v/s

M/s J.M.A. Industries Ltd. 1993 (3) RSJ 696 the service of a workman can be considered as abandoned only after giving him ample opportunity of hearing even if it is proved that workman remained absent for a certain period without sanction of the employer. Neither any notice was issued to the workman to join his duty nor his explanation was called regarding absence. So it cannot be considered as a case of abandonment of service at all. Accordingly issue no.3 is decided against the management.

10.As provided u/s 25-B(2) of the Act the service of a workman is considered to be continuous service if he worked for 240 days during a period of 12 calendar months preceding the date with reference to which calculation is to be made. As per detailed discussion in foregoing paragraph of this award the service of the workman should be considered as continuous as he worked for more than 240 days during a period of one year prior to the date of his termination. As provided u/s 25-F of the Act the management is required to give one month notice indicating the reasons for retrenchment and to make payment of salary of the period of notice and to pay retrenchment compensation in case the management wants to retrench the workman. Admittedly neither notice was served nor salary regarding period of notice was paid nor retrenchment compensation was paid to the workman. In these circumstances I feel no hesitation in holding that the termination of service of the workman is in violation of mandatory provisions of Section 25-F of the Act.

11.Although I have given findings in earlier paragraph of this award that workman had completed 240 days of his service during a calendar year but even if for the sake of arguments it be considered that workman could complete only 237 days of service during a calendar year even than I feel the termination of the workman is illegal on the principle of last come first go. The management has taken plea in this case that few persons junior to the workman have been retained in service. It is evident from the document Ex.M-A that Raghbir Sharma and Wazir Singh were given employment as store boys by the management on 19.5.1993. It is evident from the document Ex.M-B that Inder Singh Dharmbir, Kuldip Singh and Min Ram were regularized on the vacant posts of 4 store boy on 8.2.1993. In this document it is mentioned that these 4 boys were working earlier on daily wage basis. Inder Singh, Dharmbir, Kuldip and Min Ram started working with the management on daily wage basis from 1.7.1991, 16.1.1992 and 30.7.1992 respectively. This fact is admitted by WW-2 Naseeb Singh an official of the management also when appeared in the witness box. Workman joined his duty on daily wage basis on 27.9.1991 prior to the date of joining of Dharmbir Kuldip and Min Ram, Dharmbir, Kuldip and Min Ram were not removed from service who joined their duties after date of joining of the workman. Certainly workman was senior to Dharmbir, Kuldip and Min Ram. The posts of store boy were lying vacant. Two posts were filled by advertisement. These circumstances clearly indicate that there was need of work after 27.5.1992

when the workman was removed from service. Min Ram was given employment on 13.7.1992 removing the workman from service. It is evident from the applications Echs.W-1,W-5 and W-3 that workman requested the management on 18.3.1993, 18.4.1994 and 28.3.1995 to allow him to join his duty by filing written applications. It is a case of clear violation of provisions of Section 25-G of the Act and the principle of last come first go was not adopted. Learned A.R. of the workman argued that management is required to follow the principle of last come first go even if it be presumed that workman had not completed 240 days of his service during a calendar year. In support of his this contention learned A.R. of the workman placed his reliance upon case law 1998 (4) RSJ 687 D.B. in case Engineer-in-chief, Haryana P.W.D. Public Health, Chandigarh v/s Gopal Singh and another. Cited case law above fully supports the version of the workman. I am of the view that management was not competent to violate the provisions of Section 25-G of the Act even if the workman had not completed 240 days of his service during a calendar year. On this point case law cited by the learned A.R. of the management General Manager, Punjab Roadways, Nawan Shehar and of the management General Manager, Punjab Roadways, Nawan Shehar and another v/s Sarasander Kumar and another 1997(2) SLR 266 is of not much help to the management as facts and circumstances of the case in hand are some what different. As per facts of the case in hand workman was intentionally removed from service although the

post of store boy was available and work was available. Even the management had given employment to another person on the same post just after I months. Resultantly the termination order is held to be illegal and unjustified due to violation of provisions of Section 25-G of the Act also."

Finding of the Court below that the respondent No.2 had completed 240 days in service, before the date of his termination, is perfectly justified. To say so, the Court below has relied upon oral as well as documentary evidence, brought on record by respondent No.2. The Court has further rightly opined that even as per evidence of MW1 Nasib Singh, the workman had completed 240 days in service before his termination. Not only this, it was also found as a matter of fact that while dispensing with service of respondent No.2, principle of last cum first go was not kept in mind. It has come on record that many workers, who were employed after the date of appointment of respondent No.2, were still in service when he was thrown out. In view of sufficient evidence on record, as has been discussed by the Court below, in paragraph Nos.7 to 11, contention of counsel for the petitioner that the workman has failed to prove his claim on record, is rejected.

Further contention of counsel for the petitioner, that the workman was employed for a seasonal work, is also liable to be discarded. Nothing of the sort has been brought on record. Even in reply to the claim statement, filed by respondent No.2, it has no where been mentioned that the work against which, respondent workman was appointed, was of seasonable nature. No evidence in that regard has been brought on record. As against this, respondent No.2, in his testimony before the Court below, has specifically stated that he was employed as a Store Body and nature of

the work was not seasonable. It is apparent from the record that in a store, activity was not of a seasonable nature, rather it continues for whole of the year.

Further argument of counsel for the petitioner that the delayed claim has wrongly been awarded by the Court below, is also liable to be ignored. It has come on record that after his termination, he had sent various letters to the petitioner, to redress his grievance, but when nothing was done, he raised the claim in the year 1996. Three such applications have been brought on record as Ex.W1, W3 and W5. It is an admitted fact that the petitioner management has miserably failed to prove on record that the respondent workman had abandoned his duty. It was a case of termination of service. Admittedly, the same was done without complying with the provisions of Section 25-F of the Act, as such, the Court below was justified in setting aside termination of respondent No.2. Award of back wages is also not on the higher side.

Civil Writ Petition No. 4163 of 2002

In this case also, the management has miserably failed to prove that the respondent-workman was a seasonal worker, as it has come on record that he was working as a *Mali* and his work was not seasonal in nature. Furthermore, in this case, there also exists violation of the provisions of Section 25-G of the Act. Other workers, who were taken in service after the respondent-workman, were allowed to continue, whereas his services were dispensed with. It has also come on record that before termination of his service, during the period of preceding 12 months, the respondent-workman had completed 240 days in service. Plea regarding delay has also rightly been dismissed. As there was non-compliance of

section 25-F of the Act, termination was rightly set aside. Grant of back wages is also not on the higher side.

Civil Writ Petition No. 3563 of 2006

In this case, it has come on record that the respondent-workman was appointed as a Store Boy and he had completed more than 240 days in service, in 12 months, preceding his date of termination. The Court has also rightly noticed that the work was not seasonal in nature and further that the workman had not abandoned his service. There also exists violation of Section 25-G of the Act. Delay was sufficiently explained on record.

In view of facts mentioned above, no case is made out for interference in all three writ petitions, referred to above.

Dismissed.

(Jasbir Singh)
Judge

February 9, 2007 **(Baldev Singh)**
gk **Judge**